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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/681,649	10/08/2003	Amy L. Nehls	1410/67565	6105
48940 7590 02/03/2009 FITCH EVEN TABIN & FLANNERY 120 SOUTH LASALLE STREET SUITE 1600 CHICAGO, IL 60603-3406				
EXAMINER				
THAKUR, VIREN A				
ART UNIT		PAPER NUMBER		
1794				
MAIL DATE		DELIVERY MODE		
02/03/2009		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

**Advisory Action  
Before the Filing of an Appeal Brief**

<b>Application No.</b> 10/681,649	<b>Applicant(s)</b> NEHLS ET AL.
<b>Examiner</b> VIREN THAKUR	<b>Art Unit</b> 1794

***--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --***

THE REPLY FILED 13 January 2009 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires \_\_\_\_\_ months from the mailing date of the final rejection.  
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.  
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**NOTICE OF APPEAL**

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

**AMENDMENTS**

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);  
(b) ☐ They raise the issue of new matter (see NOTE below);  
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.  
NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  
The status of the claim(s) is (or will be) as follows:  
Claim(s) allowed: \_\_\_\_\_.  
Claim(s) objected to: \_\_\_\_\_.  
Claim(s) rejected: \_\_\_\_\_.  
Claim(s) withdrawn from consideration: \_\_\_\_\_.

**AFFIDAVIT OR OTHER EVIDENCE**

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

**REQUEST FOR RECONSIDERATION/OTHER**

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:  
See Continuation Sheet.  
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). \_\_\_\_\_.  
13. ☐ Other: \_\_\_\_\_.

/Steve Weinstein/  
Primary Examiner, Art Unit 1794

Continuation of 11, does NOT place the application in condition for allowance because: Applicant urges on page 13 that it would go against the disclosure of Morris, Jr. to have a carcass simultaneously extend beyond both the entrance and exit of the steam chamber as the dwelling time in the chamber would be required to ensure that the steam would contact all of the surfaces. This argument has been considered but is not deemed persuasive. A dwell time in the chamber would have been required regardless of the particular length of the product. Even applicant's product would require a particular dwell time within the chamber.

Regarding the secondary references, applicant urges that these references do not have the structural integrity to be contacted directly on their surface by steam and teach away from directly contacting the surface of the product with steam. This argument has been considered but is not persuasive. It is noted that the primary reference already teaches direct contact of a food product with steam. The secondary references have only been relied on to teach that it has been conventional to have an extended length of food product that extends beyond the ends of the steam treatment zone. It is further noted, however, that claim 1 does not recite that the food is continuous but only that it extends beyond both an entrance and exit of the steam sleeve.

Regarding the inwardly open channel, Applicant urges that Moreland does not teach this limitation. The channels, however, are clearly open in inwardly regardless of the positioning of a stationary tube. The claim is not specific with respect to what is the channel inwardly open. Applicants arguments state that the "groove 43 is not inwardly open to the steam sleeve," but the claim does not recite this language and only recites that the channel is inwardly open channel formed in the interior wall of the sleeve. Regarding the treatment fluid not contacting the food, in Moreland reference, it is noted that the reference still teaches using inwardly open channels, and the primary reference teaches direct contact of the food product with the treatment fluid. The reference has been relied on to teach the channels and helical path taken by a treatment fluid that contacts a material in its proximity for treating that material. Applicant's arguments with respect to claim 28, on page 14 are similar to those discussed with respect to claims 1 and 2, and are not persuasive for the reasons discussed above.

Applicant's argument on page 15 also relates to the structure taught by Moreland. These arguments are not persuasive for the reasons discussed above.

It is further noted that the claims do not specify a dimension of the food relative to the dimension of the sleeve. As disclosed, the interior of the sleeve would be filled as the food passes through the sleeve. Since the steam flows in the channels and if the food is not in relative contact with the channels or of a dimension to fill the the steam sleeve, it is noted that the steam would not achieve the desired contact with the food.